

IN RE ATTORNEY'S FEES REQUEST OF MADELON BLUM

IBIA 82-38-A

Decided May 11, 1982

Request for attorney's fees filed under the Equal Access to Justice Act.

Denied.

1. Attorney's Fees: Equal Access to Justice Act

An administrative appeal not required by statute to be adjudicated according to the provisions of 5 U.S.C. § 554 (1976) is not covered by the attorney's fees provisions of the Equal Access to Justice Act.

APPEARANCES: Madelon Blum, Esq., Bradbury, Bliss & Riordan, Inc., Anchorage, Alaska, pro
se. Counsel to the Board: Kathryn A. Lynn.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

On May 3, 1982, movant filed a motion and supporting memorandum under the Equal Access to Justice Act, 5 U.S.C. § 504 (Supp. IV 1980), seeking \$5,009.64 allegedly incurred in costs and attorney's fees in the prosecution of an appeal to the Board of Indian Appeals. That appeal concerned the

denial of grant funds under the Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901-1963 (Supp. 11 1978) and resulted in a decision for movant's client. Aleutian/Pribilof Islands Association, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 9 IBIA 254, 89 I.D. 196 (1982).

This motion is docketed under the above case name and number. The Board issues this decision without establishing a briefing schedule because the motion demonstrates on its face that it is without merit.

The Equal Access to Justice Act provides for the payment of costs and attorney's fees in certain adversary adjudications conducted by agencies of the Federal Government. Section 504(b)(1)(C) states in pertinent part: "[A]dversary adjudication' means an adjudication under section 554 of this title." Section 554 of Title 5 "applies, according to [its] provisions * * *, in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing."

Grants under the Indian Child Welfare Act are governed by 25 U.S.C. §§ 1931-1934 (Supp. II 1978). Nowhere in these sections is an administrative appeal from a denial of a grant application required to be conducted under 5 U.S.C. § 554 (1976).

Furthermore, the regulations implementing the grant program also demonstrate that the decisionmaking process regarding grant applications is not governed by the statutory requirements of section 554. These regulations state that appeals from adverse decisions are taken under the provisions of

25 CFR Part 2. See 25 CFR Part 23, Subpart F. The regulations in 25 CFR Part 2 provide procedures for Departmental appeals from administrative decisions of the Bureau of Indian Affairs in the absence of a statutory requirement that those decisions be reviewed under 5 U.S.C. § 554 (1976). See generally 25 CFR Part 2, Subpart A. (Proceedings before the Board of Indian Appeals are governed by procedural requirements found at 43 CFR 4.310-.340.)

[1] Because neither the agency's initial determination concerning the grant application of the Aleutian/Pribilof Islands Association nor the Association's administrative appeal from the agency's determination are required by statute to be conducted according to the provisions of 5 U.S.C. § 554 (1976), the adjudication in question was not covered by the Equal Access to Justice Act. 1/ There being no other provision for the award of attorney's fees to litigants in administrative appeals before the Board, movant's request for fees is denied.

Wm. Philip Horton
Chief Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Jerry Muskrat
Administrative Judge

1/ The Department of the Interior has yet to publish regulations implementing the Equal Access to Justice Act. Such regulations have been published, however, by the Department of Justice. See 47 FR 15776 (Apr. 13, 1982). As mandated by the Act, the regulations of the Department of Justice limit the award of attorney's fees to adversary adjudications required by statute to be conducted by the Department under 5 U.S.C. § 554 (1976).